

OFFICE OF PERSONNEL MANAGEMENT
Interagency Advisory Group
1900 E. Street, N.W.
Washington, D.C. 20415

1006

76

Minutes of the IAG Committee on Labor-Management Relations
April 26, 1979

Mr. Tony Ingrassia, Assistant Director, OPM for Labor-Management Relations, chaired the meeting. He introduced H. Stephan Gordon, presently Chief Administrative Law Judge at DoL, and recently nominated by President Carter to the position of General Counsel of the Federal Labor Relations Authority (FLRA). Judge Gordon discussed the role and functions of the General Counsel. He made the point that he envisions a General Counsel operation patterned after the independent NLRB G.C. The establishment of a General Counsel to prosecute public rights is a very fundamental departure from the method under which the Order was administered. Under the Order, it was the responsibility of the wronged party to seek a private remedy for violation of a private right.

Under Title VII, the General Counsel will serve equally any complainant, be it management, the union or an individual. In concept, he said, the function of the General Counsel is analogous to a public prosecutor pursuing the interest of public rights as opposed to private rights. He added, however, that a private party will be allowed to play as full a role as he or she desires in the development and presentation of cases.

Under the Order, he observed, many parties came to the formalized hearing before an ALJ unprepared. He said he views the labor relations field as sophisticated and highly technical. He emphasized the importance of good case preparation, and just as important, being represented by knowledgeable persons.

Judge Gordon said he strongly favors the voluntary resolution of conflicts, since that serves the interest of the parties far more than a forced resolution. He indicated that after a complaint is filed and investigated, the General Counsel would assert himself in attempting settlement before he would issue a complaint. He would expect a strong effort on the part of litigating parties to achieve such voluntary resolution.

In response to questions, he said he did not agree with the NLRB's belief in the efficacy of posting as an absolute requirement for resolution. He considers that requirement as form over substance and intends to approach the remedy of posting on an ad hoc basis. With regard to deferral to arbitration in cases which could be handled as a ULP, he stated he was not certain he subscribed to the NLRB's decision in Collyer Insulated Wire, 192 NLRB No. 150, 77 LRRM 1931 (1971), in which the NLRB dismissed a complaint, without deciding the merits of the alleged unilateral change in the terms of the parties' contract, and without prejudice to either party. In doing so, the Board deferred to the grievance-arbitration process for resolution of the controversy, so long as the matter was resolved in a manner consistent with the NLRA. He did say, however, that he would apply the NLRB's Spielberg doctrine where an award has already been rendered. In Spielberg Mfg. Co., 112 NLRB 1080, 1082, 36 LRRM 1152 (1955), the NLRB said it would honor an award if the arbitration proceedings were fair and regular, all parties agreed to be bound, and the award is not clearly repugnant to the purposes and policies of the Act.

At the conclusion of Judge Gordon's remarks, Mr. Ingrassia called attention to Messrs. Haughton's and Frazier's letter of April 20 delegating certain FLRA authority to Regional Directors. In doing so, he pointed out the last paragraph of the letter reaffirming their policy of encouraging voluntary settlement of disputes was clearly in harmony with Judge Gordon's remarks.

Interpretation and Guidance on Dues Allotments - FLRA No. O-PS-1

As a result of FLRA decision No. O-PS-1, a draft FPM Special (Blue) Bulletin on the interpretation and application of 5 U.S.C. 7115(a), Allotments to Representatives, was presented for discussion. It was decided that OPM should immediately issue the Special Bulletin to Heads of Departments and simultaneously issue a duplicate FPM Bulletin to all FPM users.

Travel Expenses for Representation Duties

It was reported that AFGE had petitioned the FLRA to issue a major policy statement interpreting 5 U.S.C. 7131 to require payment of travel and per diem for employees on official time representing their union in negotiations and other representational duties. The FLRA has solicited a position from OPM. The deadline for filing is May 4. Mr. Ingrassia indicated OPM will take a strong position opposing acceptance of the petition, essentially arguing that it is not a monolithic issue treatable as a major policy. OPM will contend that the issue must be viewed in the circumstances of a particular case, on a case by case basis. Agencies wishing to file may get copies of the AFGE petition and the OPM response from OLMR.

Union Planned Week of Protest

Independent unions have joined the AFL-CIO in announcing a week of protest starting June 14. Agencies were urged to keep OLMR informed of the extent of the protest plans and actions.

GAO Study

The GAO has representatives at several agencies making preliminary inquiries into how implementation of CSRA is progressing. The current inquiries are directed at exploration for subject areas needing more intensive study. They have expressed particular interest in the use of official time for representation duties, agency strike contingency plans, and any perceived discriminatory actions suffered by employees active in union representation duties.

It was also reported that OPM received an official inquiry from GAO requesting a response to some concerns regarding the effects of management rights on the collective bargaining process.

Evaluation Framework - Federal Labor-Management Relations Program

OPM has embarked upon a vigorous project to evaluate the impact of CSRA on agency operations. One of the preliminary steps involved the development of an attitudinal questionnaire that will be sent to 20,000 employees randomly selected. The Unions were consulted on the content of the questionnaire before it was put in final form. However, AFGE will disavow any involvement in the survey in its May 12, 1979 edition of the UG.

Evaluating the effects of Title VII will focus on three areas:

- (1) the scope of bargaining
- (2) the 3rd party mechanism, and
- (3) management effectiveness

A paper outlining the evaluation method was distributed and agency's view solicited. Agencies can call in their comments through their OLMR liaison or if in-depth discussion on the matter is sought, Don Wilson should be contacted.

E.O. 12128 amended

It was announced that OPM was replaced by the FLRA on the three member Employee Management Relations Commission that administers the employee-management program in the Foreign Service.